SINGLE BENCH

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W. P. (S) No. 5214 **/2006**

PETITIONER : Onkar Pali S/o Shri Samaru
Age about 50 years
R/o Ashok Nagar Near, Electric Sub Station,
Khamtrayee,Bilaspur, District-Bilaspur (C.G.)

P.R. No. 5256/06
Presented by Lav Sharma
date 20/9/06

VERSUS

RESPONDENTS

1. State of Chhattisgarh
Through :- Secretary,
Department of Pubkic Works,
Dau Kalyan Singh Bhawan,
Raipur (C.G.)

2. Engineer-in-Chief,
Pubkic Works Department,
Raipur (C.G.)

3. Superintending Engineer,
Pubkic Works Department,
Bilaspur Division,
Distt. Bilaspur (C.G.)

4. Executive Engineer,
Pubkic Works Department,
Division No.1 Bilaspur,
Distt. Bilaspur (C.G.)

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WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

W. P.(S) No. 5214 of 2006

Petitioner : Onkar Pali

Versus

Respondents : State of Chhattisgarh & Others

Shri Lav Sharma, counsel for the petitioner.

Shri Ajay Dwivedi, Panel Lawyer for the respondents.

ORDER

(3rd October, 2006)

1. Learned counsel for the petitioner submits that the petitioner was appointed on 5.2.1971 and at present he is working as Labour (class-IV employee) in the respondent/department as daily wager.

2. The petitioner has filed this petition praying for a relief in terms of the judgment and order passed by the Supreme Court in the case of **Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others[1] and Mineral Exploration Corporation Employees' Union v. Mineral Exploration Corporation Limited & Anr.[2]**

3. The Supreme Court in the case of **Secretary, State of Karnataka and Others** (supra), in para 53 has held as under:

> "53. .....The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular

recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

4. The Supreme Court in the case of Mineral Exploration Corporation Employees' Union (supra) in para 17 has held as under :-

> "17. It is seen from the above paragraph that this Court directed the Union of India, the State Governments and their instrumentalities to regularize as a one-time measure, the services of such irregularly appointed workman, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaking to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed."

5. Having regard to the facts and circumstance of the case and in view of the dicta laid down by the Supreme Court in the above stated cases, it is well established principle of law that the petitioner being daily-wager was not appointed in accordance with the constitutional scheme and as per the statutory rules, as the appointment was not made on the basis of the open competition of the similarly situated candidates.

6. The petition is devoid of any merit and is accordingly dismissed. However, the petitioner is at liberty to make a representation to the employer for appropriate relief, if so advised. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

{(2006) 4 SCC 1}[1], {JT 2006 (7) SC 151}[2]

Thakur